

AMENDED IN ASSEMBLY JUNE 20, 2005

AMENDED IN SENATE MAY 26, 2005

AMENDED IN SENATE MAY 23, 2005

AMENDED IN SENATE MAY 9, 2005

AMENDED IN SENATE MARCH 17, 2005

**SENATE BILL**

**No. 163**

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**Introduced by Senator Scott  
(Coauthor: Senator Kuehl)**

February 8, 2005

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An act to add Section 10295.2 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Scott. Public contracts.

Existing law establishes various requirements applicable to entities that want to contract with the state.

This bill would require a pharmaceutical company, *as defined*, entering into a contract with an agency of the state to disclose the percentage of its national operating budget that is expended on marketing purposes, and the percentage of its national operating budget expended on research and development, with specified exceptions. The bill would prohibit a state department or agency from entering into a contract with a pharmaceutical company in the absence of that disclosure. This bill would authorize a pharmaceutical company to request that confidential or proprietary information so disclosed be held confidential and would make findings regarding the interest protected by keeping this information confidential.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10295.2 is added to the Public Contract  
2 Code, to read:  
3 10295.2. (a) A pharmaceutical company entering into a  
4 contract with a state department or agency shall disclose to the  
5 Legislature and to the chief of the department or agency  
6 secretary, the percentage of its national operating budget that is  
7 expended for marketing purposes, and the percentage of its  
8 national operating budget that is expended for research and  
9 development purposes. No state department or agency may enter  
10 into a contract with a pharmaceutical company in the absence of  
11 that disclosure. This disclosure shall be made 30 days prior to the  
12 effective date of the contract and annually thereafter. The  
13 following marketing expenses are not subject to the requirements  
14 of this section:  
15 (1) Expenses of twenty-five dollars (\$25) or less.  
16 (2) Reasonable compensation and reimbursement for expenses  
17 in connection with a bona fide clinical trial of a new vaccine,  
18 therapy, or treatment.  
19 (3) Scholarships and reimbursement of expenses for attending  
20 a significant educational, scientific, or policymaking conference  
21 or seminar of a national, regional, specialty medical, or other  
22 professional association if the recipient of the scholarship is  
23 chosen by the association sponsoring the conference or seminar.  
24 (4) Drug samples given to physicians and health care  
25 professionals intended for free distribution to patients.  
26 (b) For the purposes of this section, the following definitions  
27 apply:  
28 (1) "Marketing" means activities associated with advertising,  
29 marketing, and direct promotion of prescription drugs through  
30 radio, television, magazines, newspapers, direct mail, and  
31 telephone in connection with detailing or promotional activities  
32 performed by the company directly, or through its  
33 pharmaceutical marketers.  
34 (2) "Pharmaceutical company" means:

1 (A) An entity that is engaged in the production, preparation,  
2 propagation, compounding, conversion, or processing of  
3 dangerous drugs, either directly or indirectly, by extraction from  
4 substances of natural origin or independently by means of  
5 chemical synthesis or by a combination of extraction and  
6 chemical synthesis.

7 (B) An entity engaged in the packaging, repackaging, labeling,  
8 relabeling, or distribution of dangerous drugs.

9 (C) A person who engages in pharmaceutical detailing,  
10 promotional activities, or other marketing of a dangerous drug in  
11 this state on behalf of a pharmaceutical company.

12 (D) “Pharmaceutical company” does not include a licensed  
13 pharmacist *or a licensed wholesaler, as defined by Section 4043*  
14 *of the Business and Professions Code.*

15 (3) “Research and development” means any activity that is  
16 undertaken for the purpose of discovering information that is  
17 technological in nature, the application of which is intended to be  
18 useful in developing a new or improved business component,  
19 including any product, process, computer software, technique,  
20 formula, or invention that is to be held for sale, lease, or license,  
21 or for use in the company’s trade or business. The activity shall  
22 constitute elements of a process of experimentation and shall be  
23 conducted for the purpose of relating to a new or improved  
24 function, performance, reliability, or quality.

25 (c) (1) Notwithstanding any other provision of law, any  
26 person required to present information to the Legislature and  
27 contracting department or agency pursuant to this section may  
28 request that confidential or proprietary information be held in  
29 confidence. The Legislature and contracting department or  
30 agency shall grant the request under any of the following  
31 circumstances:

32 (A) The information is exempt from disclosure under the  
33 California Public Records Act, Chapter 3.5 (commencing with  
34 Section 6250) of Division 7 of Title 1 of the Government Code.

35 (B) On the facts of the particular case, the public interest  
36 served by not disclosing the information clearly outweighs the  
37 public interest served by disclosure of the information. If it is  
38 determined that the disclosure of the information will result in an  
39 unfair competitive disadvantage to the person supplying the  
40 information, then the information shall not be disclosed.

1 (2) The contracting department or agency may, by regulation,  
2 designate certain categories of information as confidential and  
3 thereby remove the obligation to request confidentiality for that  
4 information. Information that has already been made available to  
5 the public through another public entity shall not be designated  
6 as confidential.

7 (3) The Legislature and contracting department or agency shall  
8 not grant the request if the information has already been made  
9 available to the public through another public entity.

10 (4) The contracting department or agency shall disclose  
11 information obtained pursuant to this section that has not been  
12 designated as confidential on its Web site to facilitate greater  
13 public disclosure.

14 SEC. 2. The Legislature finds and declares that Section 1 of  
15 this act, which adds Section 10295.2 to the Public Contract Code,  
16 imposes a limitation on the public's right of access to the  
17 meetings of public bodies or the writings of public officials and  
18 agencies within the meaning of Section 3 of Article I of the  
19 California Constitution. Pursuant to that constitutional provision,  
20 the Legislature makes the following findings to demonstrate the  
21 interest protected by this limitation and the need for protecting  
22 that interest:

23 Information provided under Section 10295.2 may contain  
24 sensitive business information, the disclosure of which will result  
25 in an unfair competitive disadvantage to the person supplying the  
26 information.